

## § 779.233

(4) The stores operated under the franchise agreement were always subject to the general administrative jurisdiction of the franchisor and agreed to comply with it; and

(5) The stores operated under the franchise agreed to install appliances, fixtures, signs, etc. according to plans and specifications provided by the franchisor and to purchase their merchandise through the franchisor except to the extent that the latter may authorize local purchase of certain items; and

(6) The stores operated under the franchise agreed to participate in special promotions, sales and advertising as directed by the franchisor, to attend meetings of franchise store operators and to pay a fee to the franchisor at the rate of one-half of 1 percent of total gross sales each month for the privileges to them and the advantages and profits derived from operating a local unit of the franchisor's system; and

(7) The franchisor under the franchise agreement had the right to place on a prohibited list any merchandise which it considered undesirable for sale in a franchise store, and the stores operated pursuant to the franchise agreed to immediately discontinue sale of any such blacklisted merchandise.

(c) It is clear from the facts and circumstances surrounding this franchise arrangement described in paragraph (b) of this section that the operators of the franchised establishments are denied the essential prerogatives of the ordinary independent businessman because of restrictions as to products, prices, profits and management. The last paragraph of the Senate Report quoted in § 779.229 makes clear that in such cases the franchised establishment, dealer, or concessionaire will be considered an integral part of the related activities of the enterprise which grants the franchise, right, or concession.

### **§ 779.233 Independent contractors performing work "for" an enterprise.**

(a) The definition in section 3(r) specifically provides that the "enterprise" shall not include "the related activities performed for such enterprise by an independent contractor." This exclusion will apply where the related activities are performed "for" the enter-

## 29 CFR Ch. V (7-1-14 Edition)

prise and if such activities are performed by "an independent contractor." This provision is discussed generally in part 776 of this chapter.

(b) The Senate Report in referring to this exception states as follows:

It does not include the related activities performed for such an enterprise by an independent contractor, such as an independent accounting firm or sign service or advertising company, \* \* \* (S. Rept. No. 145, 87th Cong., 1st Sess., p. 40).

The term "independent contractor" as used in section 3(r) has reference to an independent business which performs services for other businesses as an established part of its own business activities. The term "independent contractor" as used in 3(r) thus has reference to an independent business which is a separate "enterprise," and which deals in the ordinary course of its own business operations, at arms length, with the enterprises for which it performs services.

(c) There are many instances in industry where one business performs activities for separate businesses without becoming a part of a larger enterprise. In addition to the examples cited in the Report they may include such services as repairs, window cleaning, transportation, warehousing, collection services, and many others. The essential test in each case will be whether such services are performed "for" the enterprise by an independent, separate enterprise, or whether the related activities are performed for a common purpose through unified operation or common control. In the latter case the activities will be considered performed "by" the enterprise, rather than "for" the enterprise, and will be a part of the enterprise. The distinction in the ordinary case will be readily apparent from the facts. In those cases where questions arise a determination must be made on the basis of all the facts in the light of the statute and the legislative history.

### **§ 779.234 Establishments whose only regular employees are the owner or members of his immediate family.**

Section 3(s) provides that any "establishment which has as its only regular employees the owner thereof or the parent, spouse, child, or other